

BOARD OF PERSONNEL APPEALS

MINUTES – MAY 21, 2009 MEETING

PRESENT:

Jack Holstrom, Presiding Officer
Steve Johnson (by telephone)
Jay Reardon
Karla Stanton (by telephone)
Quinton Nyman

STAFF ATTENDING:

Marieke Beck, Board Attorney
Leah Coles, assist with Watson Case
Tonya McCormack
John Andrew
Joe Maronick
Paul Melvin
Ron Stormer

BOARD BUSINESS

APPROVAL OF MINUTES:

Minutes for January 8, 2009 meeting were approved. Member Reardon moved to approve, Member Johnson seconded the motion. Motion passed 3-0.

Minutes for March 26, 2009 meeting were approved. Member Johnson moved to approve, Member Reardon seconded the motion. Motion passed 3-0.

Member Stanton was asked to abstain from voting since she was not part of the Board Meetings.

NEXT MEETING DATE:

The next meeting is set for July 16th pending an appeal on a no merit appeal on an Unfair Labor Practice, in the second floor west conference room B of the Employment Relations Building, 1805 Prospect Avenue, Helena, Montana.

PUBLIC COMMENTS:

No comments.

ATTORNEY COMMENTS:

Lea Coles addressed the Board in regards to the Watson v. Department of Transportation case. This case was appealed to District Court. District Court Judge McCarter reversed and remanded the case back to the Board. Lea is recommending and will prepare a Notice of Remand to the Hearings Officer. This is procedural only with no appeal rights. Per Lea, the District Court's decision is loosely written and may open itself for new evidence. The best place to handle this would be the Hearings Officer for an evidentiary hearing. Board Member Reardon moved to remand the case to the Hearings Examiner to review and apply the necessary Findings of Fact in accordance with the District Court Order dated April 21, 2009, Member Johnson seconded the motion. Motion passed unanimously, 5-0.

Board Attorney Beck addressed the Board in regards to the Wibaux Case (ULP 2005). The Hearings officer determined the District did commit a ULP when it refused to bargain prior to determining criteria for a RIF. This resulted in a tenure teacher being terminated. The Hearings Officer issued a decision on stipulated facts. It was then appealed to BOPA in 2006. In light of the recent Bonner decision from the Supreme Court, The Board remanded the case back to the Hearings Officer. The case walked through the process again. On May 9, 2009, Judge Sherlock affirmed the BOPA and second Hearings decision that was issued. Marieke has not heard if it will be appealed. If the case is appealed, she will then put a memorandum of the case together for Board.

Presiding Officer Holstrom would like to compliment Board Attorney Marieke Beck's revision of the rules. Marieke is working on the old rules and with the new rules is using Oregon for a model. Marieke will be meeting with the Hearing Bureau next week in regards to what their needs are and then will be sharing them with others for their comments and others prior to the formal comment period. She will be emailing them out as she works on them. This also includes the rule on lay representation and additional direction on no merit findings. There will be better language on the rules for mailing and date of mailing timeframes.

Member Reardon asked if Board Attorney Beck knew if the Supreme Court was going to make a decision since the public comments has been over for about a month. Marieke stated that the Chief Legal has sent letter in regards to lay representation for Boards and Councils. She has not heard anything but will find out before writing the rules.

MISCELLANEOUS:

No other comments.

Member Reardon moved to adjourn the meeting with Member Johnson seconding the motion. Motion passed 5-0.
